

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

FILE COPY

POLS

IN THE MATTER OF THE
LICENSE OF

BRUCE KOBBS, R.PH.,
RESPONDENT.

FINAL DECISION AND ORDER
ADOPTING STIPULATION

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Bruce A. Kobs, R.Ph.
1703 Crystal Springs Avenue
Oshkosh, WI 54901

Pharmacy Examining Board
P.O. Box 8935
Madison, WI 53708-8935

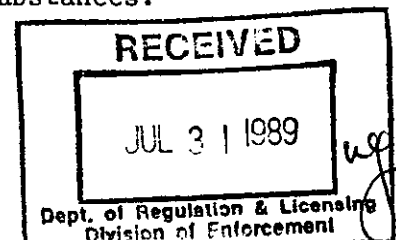
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. That Bruce A. Kobs, R.Ph., Respondent herein, was at all times relevant to this proceeding duly licensed under the provisions of Chapter 450, Wis. Stats., to practice as a registered pharmacist in the State of Wisconsin.
2. That Bruce A. Kobs, R. Ph., holds a license as a pharmacist, number 9666, granted December 5, 1979.
3. That the Respondent's date of birth is May 23, 1955 and current address is 1703 Crystal Springs Avenue, Oshkosh, Wisconsin 54901.
4. On a continuing and regular basis from 1978 through November, 1986, without the authorization of a prescription from a practitioner, and without payment, respondent diverted for self administration from his places of employment as a pharmacist, varying quantities of controlled substances including among others Cocaine, Ritalin, Restoril, Dexdrine, Codeine, Synalogs DC, Tylenol with Codeine #3 and Tylenol with Codeine #4.
5. On a regular basis from 1978 through November, 1986, respondent abused alcohol in conjunction with his abuse of controlled substances.



6. Respondent practiced or attempted to practice pharmacy while under the influence of an impairment by alcohol and controlled substances.

7. On January 5, 1987, respondent entered Milwaukee Psychiatric Hospital McBride Center inpatient treatment for chemical abuse and dependency and was discharged on February 2, 1987, to the McBride Center Halfway House. Respondent's Axis I discharge diagnosis was Opiate Dependency-Continuous, Poly-Drug Dependency. Respondent was discharged from the McBride Recovery House in early May 1987. Respondent continued rehabilitation treatment with weekly group treatment meetings from May, 1987 to January, 1988, and biweekly group treatment meetings from January, 1988 to January, 1989. Throughout treatment from February, 1987 through January, 1989, respondent submitted weekly random witnessed urine screens and was also on continuous treatment with Trexan. Respondent also participated in regular AA/NA group meetings. A report on respondent's current rehabilitation status and rehabilitation program is attached hereto as Exhibit A.

8. Respondent is currently employed as a pharmacist by a retail pharmacy in Oshkosh, Wisconsin, where respondent was employed full-time prior to entering inpatient treatment for drug abuse and dependency. Respondent's supervising pharmacist is informed of respondent's drug abuse and dependency history and has been involved with the collection of random witnessed urine screens from respondent as part of respondent's rehabilitation program. A report on respondent's employment status is attached hereto as Exhibit B.

CONCLUSIONS OF LAW

1. The Wisconsin Pharmacy Examining Board has jurisdiction over this matter and authority to take disciplinary action against the Respondent pursuant to Wis. Stats. sec. 450.10(1), and Wis. Adm. Code Ch. Phar 10.

2. The Wisconsin Pharmacy Examining Board is authorized to enter into the attached Stipulation pursuant to Wis. Stats. sec. 227.44(5).

3. That Respondent's conduct described in paragraph 4 of the Findings of Fact violated sec. 161.41(2r)(a) and (3), Wis. Stats., and constitutes unprofessional conduct under secs. Phar 10.03(1) and (3), Wis. Adm. Code, and Respondent is therefore subject to discipline under sec. 450.10(1)(b)1., Wis. Stats.

4. That Respondent has practiced or attempted to practice pharmacy while his ability to competently perform the duties of a pharmacist were impaired by drug or alcohol abuse, in violation of Wis. Stats. sec. 450.10(1)(a)3. and Wis. Adm. Code sec. Phar 10.03(7), and such conduct constitutes unprofessional conduct and respondent is therefore subject to discipline under sec. 450.10(1)(b)1., Wis. Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

That the Stipulation of the parties, attached hereto, is accepted.

IT IS FURTHER ORDERED that effective upon the date of this Order, the pharmacist license of Bruce A. Kobs, Respondent, shall be SUSPENDED for a period of not less than five (5) years. The Board in its discretion may restore Respondent's license to full, unlimited status only upon petition by Respondent after completion of the aforesaid suspension period, and a showing that Respondent has complied with all terms and conditions of this Order, and a demonstration that Respondent may practice pharmacy without condition or limitation.

1. The suspension shall be stayed for a period of three months, conditioned upon compliance with the conditions and limitations outlined in paragraph 2., below.

a. The Respondent may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the Respondent's practice during the prior three (3) month period.

b. The Board may without hearing deny an application for extension of the stay, or commence other appropriate action, upon receipt of information that Respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by the Respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in Wis. Adm. Code Ch. RL 1 upon timely receipt of a request for hearing.

c. In consideration of Respondent's regime of and progress in treatment commenced on March 2, 1987, the Board may grant a petition by the Respondent for return of full licensure upon a showing by Respondent of successful compliance for a period of 31 months with the terms of paragraph 2., below.

d. The applications for extension under 1.a. and all required reports under 2.a-c. shall be due on the following dates:

January 1, 1990, and each and every January 1,
April 1, July 1 and October 1 thereafter that this
order is in effect.

2. CONDITIONS OF STAY AND LIMITATIONS.

a. Respondent shall remain free of alcohol, prescription drugs and controlled substances not prescribed by a practitioner for legitimate medical purposes. Respondent shall have his physician report in writing to the supervising physician or therapist under paragraph 2.b.(1) all medications prescribed to the Respondent within 3 days of such prescribing.

b. Rehabilitation Program. Respondent shall continue in a rehabilitation program acceptable to the board for the treatment of chemical abuse and dependency. Such program shall consist of the following elements and requirements:

(1) Respondent shall continue in a rehabilitation program under the direction and supervision of a physician or therapist acceptable to the Pharmacy Examining Board. Respondent shall immediately provide a copy of this Order to his supervising physician or therapist.

(2) Respondent shall continue in quarterly evaluation with his supervising physician or therapist to review his progress in rehabilitation. Respondent shall comply with all the recommendations for continuing or additional treatment or therapy as recommended in the professional judgment of his supervising physician or therapist.

(3) Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent upon a frequency as recommended by the supervising physician or therapist, but not less than one meeting per week. Attendance of respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist.

(4) Respondent's rehabilitation program shall include and Respondent shall participate in a program of random, witnessed collection of urine and/or blood specimens for monitoring for presence of controlled substances and alcohol in his blood and/or urine on a frequency of not less than four times per month for the period this Order remains in effect.

If at any time the physician or therapist supervising the Respondent's plan of care, or Respondent's employer or the Board deems that additional blood or urine screens are warranted, Respondent shall submit to such additional screens as requested or recommended.

The Respondent shall be responsible for obtaining a monitoring facility and reporting system acceptable to the Board.

To be an acceptable program, the monitoring facility shall agree to provide random and witnessed gatherings of specimens for analysis for all controlled substances and alcohol. Any specimen that yields a positive result for any controlled substance or alcohol shall be immediately subjected to a gas chromatography-mass spectrometry(hereinafter, "GC-MS") test to confirm the initial positive screen results. The monitoring facility shall agree to immediately file a written report directly with the Pharmacy Examining Board, the supervising physician or therapist, and the Respondent's supervising pharmacist upon any of the following occurrences: if the Respondent fails to appear for collection of a specimen as requested; or if a drug or alcohol screen and confirmatory GC-MS test prove positive; or if the Respondent refuses to give a specimen for analysis upon a request authorized under the terms of this Order. Respondent shall arrange for quarterly reports

from the monitoring facility directly to the Board and to Respondent's supervising physician or therapist providing the dates and results of specimen analyses performed. Such reports shall be due on dates specified in paragraph 1.d. above.

The monitoring facility shall further agree to keep a formal record of the chain of custody of all specimens collected and subjected to analysis. The facility shall further agree to preserve any specimens which yielded positive results for any controlled substance or alcohol, pending further written direction from the Board.

(5) Respondent shall arrange for quarterly reports from his supervising physician or therapist directly to the Board evaluating and reporting:

- (a) A summary of Respondent's progress in his rehabilitation program to date, and all recommendations for continuing rehabilitation treatment,
- (b) Respondent's attendance in NA/AA meetings,
- (c) Respondent's participation in and results of his random witnessed urine and/or blood screening program.

Such quarterly reports shall be due on the dates specified under paragraph 1.d. of this Order.

(6) Respondent shall arrange for agreement by his supervising physician or therapist to report immediately to the Board any conduct or condition of Respondent that may constitute a danger to the public in his practice of pharmacy, and any occurrence that constitutes a failure on the part of the Respondent to comply with the requirements of this Order or treatment recommendations by the supervising physician or therapist.

c. Practice of Pharmacy: Limitations and Conditions. Any practice of Pharmacy by Respondent during the pendency of this Order shall be subject to the following terms and conditions:

- (1) Respondent shall not practice as a pharmacist in any capacity unless he is in full compliance with the rehabilitation program as specified and approved under this Order.
- (2) Respondent shall not be employed as or work in the capacity of a "managing pharmacist" as defined in sec. Phar 1.02(2), Wis. Adm. Code.
- (3) Respondent shall not be employed in the practice of pharmacy except under continuing supervision of another registered pharmacist, who is in good standing with and acceptable to the Board.

(4) Respondent shall not place nor be responsible for the placing of any orders for the purchase of any controlled substances, and respondent shall not sign any invoices or receipts for controlled substances.

(5) Respondent shall provide his employer and any prospective employers with a copy of this Stipulation and Final Decision and Order immediately upon issuance of this Order, and upon any change in employment.

(6) Respondent shall arrange for his supervising pharmacist to provide directly to the Board quarterly written reports evaluating Respondent's work performance, which shall include reports or information required under subparagraph (7) and (8) hereunder. Such reports shall be due on the dates specified in paragraph 1.d. of this Order.

(7) Respondent shall obtain agreement from his supervising pharmacist to monitor Respondent's access to and accountability for handling of controlled substances in order to reasonably detect loss, diversion, tampering or discrepancy relating to controlled substances. Respondent's supervisor shall include in the quarterly reports a description of Respondent's access to controlled substances and the monitoring thereof. Any loss, diversion, tampering or discrepancy shall be immediately reported to the Board.

(8) In addition to the foregoing subparagraph (7), Respondent shall obtain from his supervising pharmacist agreement to conduct accountability audits of all schedule II controlled substances every six months for the duration of this Order. The audit shall be conducted by and certified by a licensed pharmacist other than respondent, who shall be approved by the Board. A summary of all audits required under this subparagraph shall be included in the quarterly report following the audit, however, any discrepancy or missing drugs indicated by the audits shall be immediately reported in writing to the Board.

(9) Respondent shall arrange for agreement by his supervising pharmacist to immediately report to the Board and to the supervising physician or therapist any conduct or condition of Respondent that may constitute a danger to the public.

(10) Respondent shall not work in excess of 48 hours per week as a pharmacist, except upon prior approval of the Pharmacy Examining Board in conjunction with a three month extension of the stay of suspension.

d. Upon request of the Board, the Respondent shall provide the Board with current releases complying with state and federal laws, authorizing release of counseling, treatment and monitoring records, and employment records.

e. The Respondent shall report to the Board any change of employment status, residence address or phone number within five (5) days of any such change.

3. Respondent shall not own in whole or in part any interest in a pharmacy except upon prior approval of the Pharmacy Examining Board.

4. Following successful compliance with and fulfillment of the provisions of paragraph 2. of this Order for a period of two years, the Respondent may petition the Board, in conjunction with an application for extension of the stay of suspension, for modification of the conditions or limitations for stay of suspension. Any such petition shall be accompanied by a written recommendation of the Respondent's supervising physician or therapist expressly supporting the specific modifications sought. A denial of such a petition for modification shall not be deemed a denial of license under sec. 227.01(3), or 227.42, Wis. Stats., or Ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

5. Respondent shall be responsible for all costs and expenses of complying with this Order and for arranging any alternative means for covering such costs and expenses.

6. The Board in its discretion may conduct unannounced inspections and/or audits, and make copies, of pharmacy records and inventory where Respondent is employed as a pharmacist.

7. Violation of any of the terms of this Order or of any law substantially relating to the practice of pharmacy may result in a summary suspension of the Respondent's license; the denial of an extension of the stay of suspension; the imposition of additional conditions and limitations; or the imposition of other additional discipline.

8. This Order shall become effective immediately upon issuance by the Pharmacy Examining Board, except for paragraph 2.a., which is effective the date of signing by Respondent.

PHARMACY EXAMINING BOARD

By: *W. R. Schaefer*
A Member of the Board

9/12/89
Date

I, Bruce A. Kobs, have read and understood all parts of this Order and attached Stipulation, and pursuant to the attached Stipulation, hereby consent to the entry of the foregoing Final Decision and Order by the Wisconsin Pharmacy Examining Board.

Dated this 28th day of July, 1989.

Bruce A Kobs
Bruce A. Kobs, Respondent

MILWAUKEE PSYCHIATRIC HOSPITAL
Division of Chemical Dependency
McBride Center for the Impaired Professional

Roland E. Herrington, M.D.
Division Director
David G. Benzer, D.O.
Medical Director
McBride Center

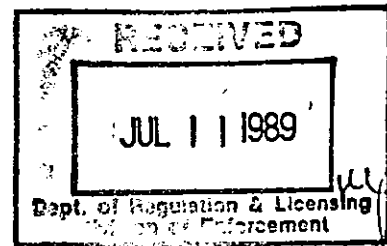
July 3, 1989

PERSONAL AND CONFIDENTIAL

Robert T. Ganch
Attorney
Division of Enforcement
State of Wisconsin
Department of Regulation and
Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, Wisconsin 53708

Re: Bruce A. Kobs, R.Ph.

Dear Mr. Ganch:



Mr. Bruce Kobs has been actively involved in the rehabilitation program at the McBride Center for the Professional since January 5, 1987, the date on which he was hospitalized at the McBride Center. He was hospitalized as an inpatient at the McBride Center from January 5, 1987 through February 2, 1987 for the treatment of chemical dependency. Following hospitalization at the McBride Center, Mr. Kobs was involved in a residential therapy experience at the McBride Recovery House for the next three months. He was discharged from the Recovery House in early May of 1987. Through the present time, he has been actively involved in an outpatient program here at the McBride Center. His program over the past two years has included support group, which initially was weekly, and now meets every two weeks. Mr. Kobs has regularly attended these support group sessions. He has been on random urine drug screening from his entry into our program on January 5, 1987 through June 8, 1989 on a weekly basis.

During his first two and a half years of involvement in our program, he was under the care of Russell Sandberg, M.D.. I assumed care of Mr. Kobs on April 1, 1989 following Dr. Sandberg's decision to relocate his practice. Additional components to Mr. Kobs' recovery program include a very active involvement in the fellowship of Alcoholics Anonymous in his community.

EXHIBIT A

I saw Mr. Kobs on June 8, 1989 in my office for an individual session. I took that opportunity to review the past two and a half years of Mr. Kobs' involvement in our program. Mr. Kobs has experienced two and a half years of uninterrupted sobriety, and during that time has had weekly urine drug screens, all of which have been negative for mood-altering chemicals. He was on Naltrexone therapy for approximately two years, that therapy was discontinued in January of 1989. He informed me that he attends AA three to five times per week in his hometown, and has a sponsor in the fellowship of Alcoholics Anonymous. He is working for Coe Drug Company in Oshkosh, and has been a full-time employee there. He feels his work with that pharmacy has been acceptable.

Our records indicate that in May of 1988 treatment records were forwarded to the Department of Regulation and Licensing regarding Mr. Kobs' first eighteen months in our program. This letter serves to update the Department on Mr. Kobs' involvement in our program over the past year.

If additional records or reports are required, please do not hesitate to contact me, and please direct all correspondence to me, in that I am now Mr. Kobs' attending physician through the McBride Program.

Mr. Kobs forwarded to me a copy of the Department's stipulation, which was dated June 15, 1989. I am aware of the five year stipulation that the Board has ordered. I also note that urine drug screens on a weekly basis apparently are requested throughout that five year period of time. I made the decision to discontinue random urine drug screens in June of 1989. It is the usual and customary practice of the McBride Center to maintain patients on random urine drug screens for approximately two years. Mr. Kobs completed over two years of urine drug screens on an outpatient basis as of May of 1989. In order to comply with the Board stipulation, I would be happy to reinstitute random urine drug screening on a weekly basis to maintain compliance with the stipulation. Furthermore, on the basis of urine drug screening and regular follow-up visits, I would be happy to generate a quarterly progress report to the Board documenting Mr. Kobs' involvement and compliance with our program.

Should you have any questions regarding Mr. Kobs' ongoing involvement in our program, please do not hesitate to contact me.

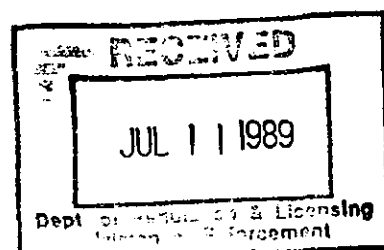
Sincerely,



David G. Benzer, D.O.

DGB/cm

cc: Bruce Kobs





DOCTORS PARK
2101 BOWEN

DOWNTOWN
375 PARK PLAZA

LAKE AIRE
2211 OREGON

OSHKOSH, WIS.
54901

4/2/89

Mr. Robert T. Ganch
Attorney
Division of Enforcement
1400 E. Washington Ave.
Madison, WI. 53708

RE: 86 PHM 80
Bruce Kobs, R.Ph.

Dear Mr. Ganch:

In response to your letter of 3/21/89:

Item 1. Mr. Kobs Position & Duties

- Employee Pharmacist
- Pharmacist in Charge during hours that I am not present
- In charge of ordering Rx drugs
- In charge of ordering OTC drugs & sundries
- Third Party Insurance Reconciliation
- Maintenance of computer software

Item 2. Mr. Kobs work performance.

Mr. Kobs work performance compared to 3 -4 years ago has been vastly improved. He has not been absent or tardy. He is more congenial with both customers & employees & finishes duties & work assignments on time.

Item 3. Problems & resulting action

A communications problem, concerning normal, daily routine exists to a small degree. We encourage Mr. Kobs to be more open & communicative with those people he works with. No other problems that I can recall in the last 2 years.

Item 4. Work Schedule

Monday: 1PM to 9PM
Tuesday: 9AM to 5PM OR Off (alternating weeks)
Wednesday: 1PM to 9PM
Thursday: 9AM to 2PM or 9AM to 5PM (alternating weeks)
Friday: 9AM to 5PM or 1PM to 9PM (alternating weeks)
Saturday: 9AM to 6PM or OFF (alternating weeks)
Sunday: 9AM to 3PM or OFF (alternating weeks)

Item 5. Observation & Supervision

Fully half of Mr. Kobs weekday work schedule is observed directly by me. Also, I observe weekly collection of urine samples.

EXHIBIT B

The Prescription and Toilette Store of Oshkosh

APR 5 1989



DOCTORS PARK 2101 BOWEN	DOWNTOWN 375 PARK PLAZA	LAKE AIRE 2211 OREGON
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OSHKOSH, WIS.
54901

Page 2

Item 6. Controlled substances Inventory Monitoring

- Annual inventory May 1 each year
- Additional inventory approx. 6 months later. Last done 10/7/88 with reconciliation from prescriptions. Next to be done in Oct. or Nov. 1989.
- Each invoice containing controlled substances is checked and initialled by Pharmacist after making sure number & quantity of controlled substances was actually received.
- All Schedule II drugs are kept under lock & key.
- All outdated controlled substances are held in our safe until such time as an accumulation of them can be reported to DEA-Chicago for subsequent destruction.

Sincerely,

Dean E. Schulz, R. Ph.
COE DRUG SOUTH, INC.
2211D Oregon St.
Oshkosh, WI. 54901

The Prescription and Toiletie Store of Oshkosh

MAR 5 1989

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF THE
LICENSE OF

BRUCE A. KOBS, R.PH.,
RESPONDENT.

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:
:
:

STIPULATION

The parties in this matter agree and stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Department of Regulation and Licensing, Division of Enforcement, on behalf of the Pharmacy Examining Board of Bruce A. Kobs' licensure as a pharmacist (case file 86 PHM 80). Bruce A. Kobs consents to the resolution of this investigation by stipulation and without the issuance of a formal disciplinary complaint and hearing.

2. The Respondent understands by signing this Stipulation that he voluntarily and knowingly waives his rights in this matter, including the right to a hearing on the allegations against him, at which time the State has the burden of proving the allegations by preponderance of the evidence, the right to confront and cross-examine the witnesses against him, the right to call witnesses on his own behalf and to compel their attendance by subpoena, the right to testify in his own behalf, the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision, the right to petition for rehearing and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

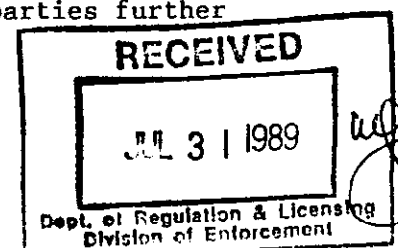
3. The Respondent admits the allegations and statements found in the attached Final Decision and Order.

4. The Respondent and the Complainant recommend the Pharmacy Examining Board to adopt this Stipulation and the attached Final Decision and Order in this matter.

5. If the terms of this Stipulation and attached Final Decision and Order are not acceptable to the Board, then none of the parties shall be bound by any of the terms.

6. The attached Findings of Fact, Conclusions of Law, Final Decision and Order may be made and entered in this matter by the Wisconsin Pharmacy Examining Board, without prior notice to any party.

7. All parties agree that Counsel for the Department of Regulation and Licensing, Division of Enforcement and the Board Advisor appointed in this matter may appear before the Wisconsin Pharmacy Examining Board to argue in favor of acceptance of this Stipulation and the entry of the attached Findings of Fact, Conclusions of Law, Final Decision and Order. The parties further



agree that Complainant's attorney and the Board Advisor may further respond to any questions of the Board during its deliberation on this matter in closed session.

8. That this agreement in no way prejudices the Pharmacy Examining Board from any further action against Respondent based on any acts not stated in the present Findings of Fact which might be violative of the Wisconsin Pharmacy Examining Board Statutes and Rules.

9. That if this Stipulation is adopted by the Wisconsin Pharmacy Examining Board, the attached Order shall become effective as stated in the order.

July 31, 1989
Date

Robert T. Ganch
Robert T. Ganch, Attorney
Department of Regulation and Licensing
Division of Enforcement

July 28, 1989
Date

Bruce A. Kobs
Bruce A. Kobs, R.Ph., Respondent

Pharmacy Examining Board, by:

9/12/89
Date

K.R. Schuch
A Member of the Board

RTG:Imp
DOEATTY-761

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each and the identification
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with State of Wisconsin Pharmacy Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon State of Wisconsin Pharmacy Examining Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: State of Wisconsin Pharmacy Examining Board.

The date of mailing of this decision is September 14, 1989.

WLD:dms
886-490

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (c). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of.

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.